IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7362 OF 2018

Ramchandra Dnyanu Patil … Petitioner
Vs.
Joint Charity Commissioner, Kolhapur Region
and others … Respondents

Mr. Prabhanjan Gujar for Petitioner.
Mr. Y. D. Patil, AGP for Respondent No.1-State.
Mr. Umesh Pawar for Respondents No.2 to 6.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 18, 2018

P.C. :

Heard Mr. Gujar, learned Counsel for the petitioner, Mr. Patil, learned AGP for the respondent No.1-State and Mr. Pawar, learned Counsel for the respondents No.2 to 6 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 03.05.2018 passed by the Joint Charity Commissioner, Kolhapur Region, Kolhapur (for short 'J.C.C.') below exhibit-1 in Application No.14 of 2017. By that order, J.C.C. appointed Rajesh Dudhale, Inspector of the Charity Office, Sangli as a caretaker to Maratha Shikshan Sanstha Urun Islampur, Taluka Walva, District Sangli having P.T.R.No.F-110/Sangli (for short 'Trust') till the disposal of the proceedings.

3. Respondents No.2 to 6 filed Inquiry Application No.14 of 2017 under Section 47 of the Maharashtra Public Trusts Act (for short 'Act') against the petitioners inter alia praying for appointment of persons, who are beneficiaries / having interest as the trustees of the Trust. During the pendency of the proceedings, respondents No.2 to 6 filed application exhibit-37 on 01.02.2018 requesting the J.C.C. to visit the school run by

the Trust for the purpose of finding out the shortcomings / deficiencies. On 01.03.2018, respondents No.2 to 6 filed application exhibit-38 for preponing the date of inquiry. Petitioner and others filed applications exhibits-46, 47, 48, 52 and 53 opposing the application exhibit-38 filed by the respondents No.2 to 6. By order dated 20.03.2018, J.C.C. rejected the applications. It appears that on 02.04.2018, petitioner No.1 and Advocate Shamrao Tukaram Patil filed Application No.268 of 2018 before the Charity Commissioner, Maharashtra State, Mumbai for transferring the proceedings pending before the J.C.C. to other authority. It is not in dispute that pending this application, the concerned J.C.C. is transferred. By the impugned order, J.C.C. has appointed Rajesh Dudhale, Inspector of the Charity Office, Sangli as a caretaker of the Trust till the disposal of the proceedings under Section 47 of the Act. It is against this order, petitioner has instituted the present Petition.

4. In support of this Petition, Mr. Gujar submitted that 15 trustees are appointed right from 1974 onwards and they are functioning as trustees till date. Out of 15 trustees, 6 trustees are founder trustees of the Trust. He submitted that because of certain minor deficiencies / infirmities, the J.C.C. had appointed caretaker for the Trust. He submitted that basically, proceedings filed by respondents No.2 to 6 under Section 47 of the Act, itself, are misconceived and are not maintainable. Section 47 of the Act contemplates appointment of trustees where there is no trustee for such Trust or the Trust cannot be administered until the vacancy is filled. The said contingency is not present in the case.

5. He further submitted that in fact none of the parties before the J.C.C. had made application for appointment of caretaker. Sub-section (2) of Section 47 lays down that the Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by

order, appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1). He submitted that without hearing the parties, the J.C.C. has suo motu passed the impugned order appointing caretaker.

6. Mr. Gujar invited my attention to the letter dated 27.12.1999 issued by the Deputy Director of Education, Kolhapur Division, Kolhapur to the Head Master of Janata Vidyalaya, Urun, Islampur. The said school is run by the Trust. He submitted that this letter clearly substantiates the case of the Trust that the rent is reimbursed from the non-salary grant. He also invited my attention to the Government Resolution dated 19.01.2013 issued by School Education and Sports Department and, in particular paragraph 1 thereof, which makes 1% of non-salary grant payable towards rent of the school building.

7. He submitted that the change reports for the period from 2010 to 2019 were submitted on 20.06.2017 and the same are pending. As far as the arrears of rent is concerned, as per the decree dated 21.02.2012 passed by the Civil Court, arrears of rent from 2003 excluding property taxes comes to Rs.14,90,592/-. As against this, the contractual rent is Rs.4,521/- per month. If the arrears are calculated from 2003 onwards till date, as per the contractual rent, the arrears comes to Rs.4,10,592/-. The trustees of the Trust have submitted one time settlement proposal with the landlord Islampur Municipal Council (for short 'Council'). He submitted that J.C.C. was not justified in appointing the caretaker more so when the application for transfer was made before the Charity Commissioner and the same was pending.

8. Mr. Gujar has taken me through the additional affidavit dated 17.12.2018 made by the petitioner, who claims to be the Secretary of the Trust. He submitted that Rs.2,00,000/- towards arrears of rent was paid

to the Council in the year 2007 and further amount of Rs.2,00,000/- is paid to the Council on 17.12.2018 and the balance amount will be paid subject to the outcome of one time settlement submitted by the trustees. For all these reasons, he submitted that Petition requires consideration.

9. On the other hand, Mr. Pawar supported the impugned order. He submitted that the Trust was registered on 31.01.1966. The tenure of the trustees is 3 years. On 28.08.1971, change report bearing No.469 of 1971 was filed. Respondent No.4 had submitted application on 01.04.2017 before the Assistant Charity Commissioner (for short 'A.C.C.') under Right to Information Act, 2005. On 02.05.2017, reply was given to the effect that change reports were submitted in the year 1968, 1969, 1970, 1971 and no change report is pending for consideration. No audit report is submitted since 2006. On 20.06.2017, petitioner submitted four change reports for the period from 2010 to 2019 before A.C.C., Sangli being Change Report No.1303/2017 (for the period 2010-2013), Change Report No.1304/2017 (for the period 2013-2016), Change Report No.1306/2017 (for the period 2016-19) and Change Report No.1305/2017 (on account of death of the trustee in the year 2013). In other words, he submitted that between 1974 and 2009, no change reports were submitted by the trustees. He has also invited my attention to the inspection report dated 24.11.2017 submitted in the proceedings. He submitted that a perusal of this inspection report would clearly reveal that the trustees were not elected after 1974. The audit reports are not submitted post 31.03.1974. The audit reports for the period from 2000 to 2006 were submitted on 18.09.2006. The audit reports for the period 2006-2007 to 31.03.2017 were submitted on 28.06.2017. Change Report between 1974 and 2010 were not submitted in the office of the A.C.C. He submitted that all these factors clearly justified appointment of caretaker on the Trust. He, therefore, submitted that no case is made out for interfering with the impugned order.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the material on record indicates that the trustees, who were administering the Trust, submitted last change report on 28.08.1971. Change reports between the period from 1974 to 2009 were not at all submitted by the trustees, who were managing the affairs of the Trust. Change Reports between 2010 and 2019 were submitted on 20.06.2017. A perusal of the inspection report dated 24.11.2017 prima facie shows that no change report was submitted between 1974 and 2010. Even audit reports of the year 1972 and 1974 to 1999 were not submitted. Audit reports for the period from 2000 to 2006 were submitted simultaneously on 18.09.2006. Likewise, audit reports for the period from 2006-2007 to 31.03.2017 were submitted on 28.06.2017. That apart, in paragraph 2, J.C.C. recorded that huge arrears of rent resulted in attachment order from the District Court. A perusal of the chart handed over by Mr. Gujar shows that as per the decree passed by the trial Court in Special Civil Suit No.43 of 2006, Trust is in arrears of Rs.14,90,592/-. The said chart is taken on record and marked 'X' for identification. Thus, the trustees of the Trust have prima facie, not properly administered the Trust in question. In view thereof, I do not find that J.C.C committed any error in appointing Inspector of the Charity Office, Sangli as a caretaker.

11. In so far as the contention based on the letter dated 27.12.1999 and the Government Resolution dated 19.01.2013 is concerned, a perusal of the affidavit dated 17.12.2018 made by the petitioner, Secretary of the Trust shows that the payment of non-salary grant was stopped by the State Government in the year 2004-2005. It has also come on record that the Council had instituted Special Civil Suit No.43 of 2006 against the Trust on 09.11.2006 for non-payment of rent. On 21.02.2012, Suit was partly decreed directing the Trust to pay rent @

Rs.10,521/- per month together with interest @ 6% from 09.11.2006. The Government Resolution dated 19.01.2013 lays down that 1% of non-salary grant is towards payment of rent. On the basis of the decree passed by the Civil Court, arrears from 2003 comes to Rs.14,90,592/-. This fact is not disputed by the petitioner. In fact, I have already taken on record chart as article 'X'. In view thereof, the reliance placed on the letter and Government Resolution does not advance the case of the petitioner.

12. In so far as the contention based upon Section 47 of the Act is concerned, equally, I do not find any merit in this submission. The petitioner is not in a position to demonstrate that the trustees have submitted the change reports from 1974 to 2009. That apart, the audit reports for the year 1972 and 1974 to 1999 were not submitted. Audit reports for the period from 2000 to 2006 were submitted simultaneously on 18.09.2006. Likewise, audit reports for the period from 2006-2007 to 31.03.2017 were submitted on 28.06.2017. In paragraph 2, J.C.C. observed that the School Janata Vidyalaya Islampur is run by the Trust since 1990 at a rented premises of Islampur Municipal Council. There is huge arrears of rent, which has resulted in attachment order from District Court in Application No.43 of 2006 and execution order in Application No.06 of 2012. If the attachment order or auction is done, the student will be highly prejudice. This is the result of no proper administration or rather legal administration to the Trust. The school premises is in dilapidated condition which may cause endanger to the life of the students. There is no school committee for the administration of the school. The pre-primary school Janata Ananddayee Balvadi is already closed down. There are various litigations filed by the staff members. As per the records of the Sangli office since 1974, there is no legal trustee to the Trust. In paragraph 3 of the impugned order, J.C.C. observed that she is constrained to appoint caretaker in the interest of the

Trust till the disposal of the pending proceedings. It is material to note that the proceedings under Section 47 of the Act are pending. The J.C.C. has neither suspended nor removed, discharged the Trustee. The J.C.C. has also not appointed any person as a trustee. In view of the gross facts obtaining in the present case, I do not find that the J.C.C. committed any error in appointing Inspector of the Charity Office, Sangli as a caretaker of the Trust. Prima facie, the trustees who are managing the affairs of the Trust have failed in discharging their duties.

13. In the light of the aforesaid discussion, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is made clear that the observations made herein are prima facie and tentative for the purpose of testing the validity of the impugned order. The J.C.C. will decide the proceedings under Section 47 of the Act, uninfluenced by the observations made herein and on the basis of the material of record as also in accordance with law.

14. At this stage, Mr. Gujar orally applies for continuation of the ad-interim order dated 14.08.2018 for a period of 3 weeks.

15. Having regard to the conduct of the petitioner as also gross facts obtaining in the present case, no case is made out for extension of the stay order. Oral application is rejected.

(R. G. KETKAR, J.)

Minal Parab